

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #01-184

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 12, 2001, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 6-4. Comments were made by the following parties:

Blake Jeffery, Director, Indiana Cast Metals Association	(CMA)
Anne Heighway, Environmental Affairs, Eli Lilly Company	(ELC)
Al McMahon, General Electric Company	(GE)
Jim Hauck, Barnes & Thornburg	(BT)
Vince Griffin, Indiana Chamber of Commerce	(ICC)
Stephen Loeschner, Citizen	(SL)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Although this rule contains language that needs to be clarified, it is certainly better than the current rule, 326 IAC 6-4. I urge the board to adopt the rule language 326 IAC 6-4.5, as presented to the board. (SL)

Response: IDEM thanks commentor. IDEM agrees that 326 IAC 6-4.5 encompassed many of the ideas the department wished to address as to fugitive dust. However, the air pollution control board (APCB) has preliminarily readopted the rule as it is currently in effect. IDEM is considering, at this time, whether to propose any further changes to the rule prior to final adoption.

Comment: This rule is substantially expanded from the existing rule. We request that the board readopt the existing rule under the sunset provision. We also request that a workgroup process be pursued to insure more discussion and public input on any expanded rule language. (BT) (CMA) (ELC) (GE) (ICC)

Response: The rule was preliminarily adopted as it is currently in effect. IDEM is considering, at this time, whether to propose any further changes to the rule prior to final adoption. If the department decides to propose additional changes, these comments will be considered at that time and discussed further with interested parties.

Comment: Define parameters for a visual violation. As U.S. EPA recognized in its 1975 response

to the state rule, the language concerning visual violations is vague and ambiguous. At that time, U.S. EPA approved all of the current fugitive dust rule except for the visual violation language in Section 2(d). Although IDEM has indicated that no person has ever been cited based on a sole violation of the visual standard, in 25 years IDEM has made no effort to clarify the rule language. IDEM's response to comments regarding the visual violation language insures that IDEM inspectors will be certified in Method 9. Method 9 is an opacity certification and does not apply to the visual violation standard being proposed in the fugitive dust rule. We agree the rule would be significantly improved by including an opacity standard in the rule and propose developing a specific fugitive dust emission standard based on U.S. EPA's Method 22. (CMA) (GE)

Response: IDEM does not believe the rule should include an opacity standard for fugitive dust. The visible standard in the rule reflects the fact that any visible dust crossing the property line negatively impacts adjacent property owners. It may be possible to use Method 22 to determine a violation under the visibility standard, provided inspectors are trained in Method 9 for visual observation as well. However, Method 22 has a limitation in that it does not include emissions from stacks and vents. IDEM will consider further the suggestion to use Method 22 while it determines whether to propose revisions to the preliminarily readopted rule prior to final adoption.

Comment: Assessing a penalty based on the visual observation would be difficult. Rather than assessing a major penalty or fine, IDEM should use a visual observation as an opportunity to develop together with the company a reasonable corrective plan. (ICC)

Response: The proposed rule that was not preliminarily adopted by the board, 326 IAC 6-4.5, included a provision that would have accomplished what the commentor suggests. It would have required a fugitive dust control plan in lieu of enforcement when a fugitive dust violation occurs. However, under the current rule at 326 IAC 6-4-2(4), a violation of the rule by visible observation may be refuted by factual data expressed in 326 IAC 6-4-2(1-3). Therefore, a major fine or penalty may still be averted with other documentation.

Comment: Secondary deposition is a new concept in the rule language. There has not been enough time to discuss this language. It is being thrown into the mix and rushed through under the guise of the sunset provision, without allowing us to work with IDEM on any issues we may have. Is secondary deposition analysis used in other states' fugitive dust rules? (CMA) (ELC) (GE)

Comment: The proposed language concerning secondary deposition analysis does not contain any standard by which that new method of determining a violation exists. The way it is written, any substance falling on any property at any distance could become a violation of the fugitive dust rule. There is no standard by which a violation can be determined. IDEM has responded previously by referring to a document entitled "The Particle Atlas". The rule language includes no reference to that document as the source for determining a violation. (GE) (ICC) (SL)

Response: The rule was preliminarily adopted as it is currently in effect without the secondary

deposition language. IDEM is considering at this time whether to propose any further changes to the rule prior to final adoption. If IDEM decides to propose secondary deposition analysis, these comments will be considered at that time and discussed further with interested parties.

Comment: Stack emissions should not be included in the fugitive dust rule. U.S. EPA does not include stack and point source emissions with fugitive dust emissions. We consider this double regulation since stack emissions are already subject to other emission limits and regulatory requirements. (CMA) (ELC) (GE)

Response: IDEM does not consider the fugitive dust rule to be a double regulation on stack emissions. As defined fugitive dust means, “the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located.” (326 IAC 6-4-1) This rule may address fugitive emissions regulated by other rules but, according to the definition, applies when a stack emission does not adequately disperse and crosses the property line.

Comment: As written, the adverse weather condition exception applies only during an upwind-downwind test. This language should be clarified. (CMA) (ELC) (GE)

Comment: IDEM goes beyond its existing authority by requiring a detailed control plan as the result of a single fugitive dust event. Although IDEM insists that a control plan may be as brief as one page, the rule language specifies the detailed information to be included in a control plan. Much of the information is unnecessary and should not be detailed in the rule. (ELC) (GE)

Comment: The section containing the histoplasmosis language is vague. It should also define specific parameters, such as volume or percentage of surface area. (SL)

Response: The above comments address 326 IAC 6-4.5. Because that rule was not preliminarily adopted by the APCB, these comments are now moot as to 326 IAC 6-4. However, IDEM is considering at this time whether to propose any further changes to the rule prior to final adoption. If the department decides to propose additional changes, these comments will be considered at that time and discussed further with interested parties.

Comment: By including ambiguities such as “every reasonable precaution,” IDEM has significantly increased its authority, as well as its ability to respond to a fugitive dust problem. (CMA)(GE) (SL)

Response: This language was in the original rule that has now been preliminarily readopted by the board. Therefore, it is not an expansion of IDEM’s current authority. IDEM welcomes suggestions to clarify this language.

Comment: The draft rule being proposed is not required by federal law. Most of the fugitive dust rule is a state-initiated creation. (CMA) (GE)

Response: Although the fugitive dust rule was created through a state-driven effort, portions of the

rule are federally required and are part of Indiana's approved SIP for TSP. In addition, since fugitive dust is a localized air pollution issue it necessitates additional requirements to the national standards.

Comment: The fugitive dust rule has had no action or discussion on it for more than four years. The last comment period was in March 1997. Recent outreach efforts from IDEM have been through public meetings that focus on answering questions about the rule, rather than through workgroup meetings. (CMA) (GE)

Response: IDEM has gone beyond the requirements of the rulemaking process to engage interested parties in this rule. IDEM has the legal authority to implement these additional requirements. The department has gathered input to draft rule language through public meetings and formal comment periods. Upon request, the department has met individually with interested parties.

Comment: Fugitive dust should not be treated as an urgent health issue. There is no data to support fugitive dust as a public health issue. It is a nuisance issue only. (CMA) (GE)

Response: Fugitive dust is a real air quality issue for many citizens who expect the department to provide relief. IDEM has received an average of 120 fugitive dust complaints per year for the last six years. Through a fugitive dust rule, IDEM can provide the many citizens the relief they request.